COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1248

M.S-H.

vs.

A.L.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The biological mother, A.L. (mother), appeals from a Probate and Family Court judge's denial of her motion seeking to vacate an open adoption agreement (agreement) in which the mother stipulated to the termination of her rights regarding her daughter, as well as the denial of her motion to reconsider that denial. Discerning no error in the judge's findings that the mother entered into the agreement knowingly and voluntarily, the agreement was in the best interests of the child, and the agreement was fair and reasonable, we affirm.

1. Standard of review. A judge's denial of a motion for relief from judgment, Mass. R. Dom. Rel. P. 60 (b), is afforded great deference. "It will not be reversed on appeal except on a showing, by clear and convincing evidence, that the judge abused her discretion." Adoption of Gillian, 63 Mass. App. Ct. 398,

411 (2005). In reviewing the motion judge's decision, we consider "whether the circumstances were so extraordinary as to warrant relief; whether the [mother] presented a 'meritorious' contention; and whether the 'substantial rights' of other parties would be adversely affected by granting the motion." Id., quoting Parrell v. Keenan, 389 Mass. 809, 815 (1983).

2. Voluntariness of consent. "Prior to the entry of an adoption decree, prospective adoptive parents and a birth parent may enter into an agreement for post-adoption contact or communication between or among a minor to be adopted, the prospective adoptive parents and the birth parents." G. L. c. 210, § 6C (a). "The court shall approve an agreement for post-adoption contact or communication if the court finds that such agreement: (i) is in the best interests of the child; (ii) contains terms that are fair and reasonable; and (iii) has been entered knowingly and voluntarily by all parties to the agreement." G. L. c. 210, § 6C (b). See Adoption of John, 53 Mass. App. Ct. 431, 437-438 (2001).

The mother consented to the termination of her parental rights upon signing the agreement. For the agreement to be valid, and the consent to be voluntary, the mother must have had an adequate understanding of the consequences of consenting to the agreement and must have given her consent freely. See Adoption of John, 53 Mass. App. Ct. at 434-435.

Here, at a hearing prior to the termination of the mother's parental rights, the judge conducted a colloquy with the mother, through which she determined that the mother's consent to the agreement was knowing and voluntary. See Adoption of John, 53 Mass. App. Ct. at 435 ("What is required is that the judge make an appropriate inquiry to establish that the parent's consent was knowing and voluntary"). During the colloquy, the mother informed the judge that she understood the terms of the agreement, that she found the terms reasonable and fair, that she had an opportunity to consult with her attorney, and that she had signed the agreement freely and voluntarily. There was no evidence of mental insufficiency or intoxication at the time of consent. See id. at 435-436.

The mother testified at an evidentiary hearing on her motion for reconsideration that she did not sign the agreement voluntarily. The motion judge credited the mother's representations made during the colloquy and discredited her testimony given at the evidentiary hearing. See Adoption of Nancy, 443 Mass. 512, 515 (2005) ("We review the judge's findings with substantial deference, recognizing her discretion to evaluate a witness's credibility and to weigh the evidence"). Aside from the mother's discredited testimony at the evidentiary hearing, there is no support in the record for her claim that

her attorney coerced her into signing the agreement by telling her she would never see the child again if she went to trial.

Although the text messages provided by the mother do not paint trial counsel in a flattering light, nothing in the text messages compels a finding of coercion. Rather, the mother and her attorney repeatedly discussed whether to take the case to trial. On multiple occasions, the mother's attorney advised her that she would not win if she went to trial and she had a better chance of establishing visits with the child if she went through with an open adoption agreement. Because the record does not include transcripts from the pretrial hearings or from the related guardianship action or the deposition that was a key point in the discussions between the mother and her counsel, there is no evidence before us to show that this advice was faulty. See Hasouris v. Sorour, 92 Mass. App. Ct. 607, 610 n.4 (2018). Furthermore, it is evident from the record before us that the judge had already denied the mother's motion for supervised visits with the child, and a guardian ad litem had recommended that the mother maintain a year of sobriety before having visits with the child. Given these facts, it was reasonable for the mother's attorney to advise her to sign the agreement and, ultimately, for the mother to choose not to proceed to trial. Cf. Surrender of a Minor Child, 1 Mass. App. Ct. 256, 262 (1973), quoting Phillips v. Chase, 203 Mass. 556,

560 (1909) (undue influence in adoption proceeding "means that the person exercising the influence so far dominated the will of the other person as to substitute his will for that of the other person with the result that the action brought about by the undue influence is not in reality the act of the person whose act it is in form, but the act of the person exercising the undue influence"). Accordingly, the judge had an adequate basis to conclude that the mother signed the agreement knowingly and voluntarily, without undue influence. See Adoption of John, 53 Mass. App. Ct. at 435-436.

3. Best interests of child; fair and reasonable terms. In addition to finding that the agreement was entered into knowingly and voluntarily, the judge must find that it is in the best interests of the child and that its terms are fair and reasonable. See G. L. c. 210, § 6C (b); Adoption of John, 53 Mass. App. Ct. at 437-438. "[D]etailed written findings are not required when a parent has consented to the entry of a decree terminating his or her parental rights." Adoption of Douglas, 473 Mass. 1024, 1025 n.6 (2016).

Although the judge did not explicitly address why the agreement was fair and reasonable in her findings, it is evident from the record that the judge and the parties discussed the agreement at length during the hearing and came to a mutually agreeable resolution. The provision of the agreement requiring

the mother to pass a hair follicle drug test two weeks prior to every visit for the first three years finds support in the report of the guardian at litem, and the judge could reasonably conclude that it was not unfair or punitive given the mother's extensive history of problems with substance use. Likewise, the judge could reasonably conclude that the provision allowing for the termination of the mother's visits if she missed two consecutive visits or two visits within a three-year period, or had two positive hair follicle tests, was also fair and reasonable.[1] During the hearing, the judge specified, and both parties agreed, that it was advisable to limit the mother's absences to provide the child with consistency.

Similarly, it was within the judge's discretion to find that the agreement was in the best interests of the child. See Adoption of Mariano, 77 Mass. App. Ct. 656, 660 (2010) (appellate court reviews "whether the judge has reached a result outside the bounds of reasonable alternatives"). Significantly, the judge found that, "[w]ithin the terms of the Open Adoption Agreement, Mother acknowledged that she lacked the ability, capacity, and readiness to assume parental responsibility for

[1] There is no support in the record for the mother's contention that a visit that did not occur through no fault of the mother would count as a "missed visit." The judge explained that visits missed because of hospitalizations caused by substance use or by incarceration would trigger this clause, thus supporting the common-sense interpretation of this clause.

the child." Moreover, the guardian ad litem found that the mother had not had a significant relationship with the child since she was eight months old. The child, who is now seven years old, has been in the care of the guardian, now the adoptive mother, since she was one year old. The judge was also permitted to consider the mother's history of problems with substance use in assessing the mother's fitness. The mother admitted that she had recently relapsed after being sober for fourteen months. There is ample factual basis in the record for the judge to find that the mother's "'ability, capacity, fitness, and readiness . . . to assume parental responsibility,' c. 210[,] § 3(c), is lacking." Adoption of John, 53 Mass. App. Ct. at 438.

Finally, this court has consistently weighed the "importance of finality and efficiency in these proceedings." Adoption of Cesar, 67 Mass. App. Ct. 708, 715 (2006). See Adoption of Willow, 433 Mass. 636, 644 n.8 (2001). Cf. Adoption of Malik, 84 Mass. App. Ct. 436, 438-441 (2013) (parents have no right to appeal from best interests hearing after decree of termination has entered). Here, there are no extraordinary circumstances that supersede the interests of finality and efficiency and warrant relief under rule 60 (b). See Jones v. Boykan, 464 Mass. 285, 291-292 (2013) (rule 60 [b] relief is reserved for

extraordinary circumstances).

Orders denying motions for relief from judgment and for reconsideration affirmed.

By the Court (Henry, Sacks & Ditkoff, JJ.[2]),

Joseph F. Stanton

Clerk

Entered: August 2, 2019.

[2] The panelists are listed in order of seniority.